

AMENDED IN ASSEMBLY APRIL 22, 2003  
AMENDED IN ASSEMBLY MARCH 20, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 418**

**Introduced by Assembly Member Pacheco**

February 14, 2003

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An act to amend Sections 415.20, 415.45, and 415.46 of, and to add Section 415.95 to, the Code of Civil Procedure, relating to civil actions.

### LEGISLATIVE COUNSEL'S DIGEST

AB 418, as amended, Pacheco. Civil actions: service of summons.

Existing law establishes the procedures by which a person or business organization may be served a summons and complaint in a civil action.

This bill would revise and recast those provisions. The bill would, among other things, allow a summons and complaint to be served by leaving a copy of these documents at the usual mailing address of the person to be served, followed thereafter by a mailed copy. The bill would additionally allow a business organization, *form unknown*, to be served by ~~delivering~~ *leaving* a copy of the summons and the complaint ~~to~~ *with* the person who is apparently in charge of *the office of* that organization *and thereafter mailing a copy of the summons and complaint to the person to be served*, as specified. The bill would also make related changes and technical, nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 415.20 of the Code of Civil Procedure is amended to read:

415.20. (a) In lieu of personal delivery of a copy of the summons and of the complaint to the person to be served as specified in Section 416.10, 416.20, 416.30, 416.40, *or* 416.50, ~~or 416.95~~ a summons may be served by leaving a copy of the summons and ~~of the~~ complaint during usual office hours in his or her office or usual mailing address, other than a United States Postal Service post office box, with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and ~~of the~~ complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and ~~of the~~ complaint were left. *When service is effected by leaving a copy of the summons and complaint at a mailing address, it shall be left with a person at least 18 years of age, who shall be informed of the contents thereof.* Service of a summons in this manner is deemed complete on the 10th day after the mailing.

(b) If a copy of the summons and ~~of the~~ complaint cannot with reasonable diligence be personally delivered to the person to be served, as specified in Section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the summons and ~~of the~~ complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and of the complaint were left. ~~If the marshal, sheriff, or registered process server is not granted access to an employee at his or her place of employment, or is attempting to serve at a usual mailing address other than a United States Postal Service post office box, a summons may be served by leaving a copy of the summons and of the complaint, at the same time, with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons~~

1 ~~and of the complaint by first-class mail, postage prepaid to the~~  
2 ~~person to be served at the place where a copy of the summons and~~  
3 ~~of the complaint were left.~~ Service of a summons in this manner  
4 is deemed complete on the 10th day after the mailing.

5 SEC. 2. Section 415.45 of the Code of Civil Procedure is  
6 amended to read:

7 415.45. (a) A summons in an action for unlawful detainer of  
8 real property may be served by posting if upon affidavit it appears  
9 to the satisfaction of the court in which the action is pending that  
10 the party to be served cannot with reasonable diligence be served  
11 in any manner specified in this article other than publication and  
12 that *either of the following applies*:

13 (1) A cause of action exists against the party upon whom  
14 service is to be made or he or she is a necessary or proper party to  
15 the action; ~~or~~.

16 (2) The party to be served has or claims an interest in real  
17 property in this state that is subject to the jurisdiction of the court  
18 or the relief demanded in the action consists wholly or in part in  
19 excluding that party from any interest in the property.

20 (b) The court shall order the summons to be posted on the  
21 premises in a manner most likely to give actual notice to the party  
22 to be served, and, if requested, to all other persons who may claim  
23 to occupy the premises and direct that a copy of the summons and  
24 the complaint be mailed by certified mail to the party at his or her  
25 last known address. Mailing to all other persons who may claim to  
26 occupy the premises shall be in the manner prescribed in  
27 subdivision (c) of Section 415.46.

28 (c) Service of *the* summons in this manner is deemed complete  
29 on the 10th day after posting and mailing.

30 (d) Notwithstanding an order for posting of the summons, a  
31 summons may be served in any other manner authorized by this  
32 article, except publication, in which event that service shall  
33 supersede any posted summons.

34 SEC. 3. Section 415.46 of the Code of Civil Procedure is  
35 amended to read:

36 415.46. (a) In addition to the service of a summons and  
37 complaint in an action for unlawful detainer upon a tenant and  
38 subtenant, if any, as prescribed by this article, a prejudgment claim  
39 of right to possession may also be served on any person who  
40 appears to be or who may claim to have occupied the premises at

1 the time of the filing of the action. Service upon occupants shall  
2 be made pursuant to subdivision (c) by serving a copy of a  
3 prejudgment claim of right to possession, as specified in  
4 subdivision (f), *on top of and* attached to a copy of the summons  
5 and complaint at the same time service is made upon the tenant and  
6 subtenant, if any. *The prejudgment claim of right to possession*  
7 *shall appear first, with any other papers or documents attached*  
8 *underneath.*

9 (b) Service of the prejudgment claim of right to possession in  
10 this manner shall be effected by a marshal, sheriff, or registered  
11 process server.

12 (c) When serving the summons and complaint upon a tenant  
13 and subtenant, if any, the marshal, sheriff, or registered process  
14 server shall make a reasonably diligent effort to ascertain whether  
15 there are other adult occupants of the premises who are not named  
16 in the summons and complaint by inquiring of the person or  
17 persons who are being personally served, or any person of suitable  
18 age and discretion who appears to reside upon the premises,  
19 whether there are other occupants of the premises.

20 If the identity of an occupant is disclosed to the officer or  
21 process server and the occupant is present at the premises, the  
22 officer or process server shall serve that occupant with a copy of  
23 the prejudgment claim of right to possession *on top of and* attached  
24 to a copy of the summons and complaint. If personal service cannot  
25 be made upon that occupant at that time, service may be effected  
26 by (1) leaving a copy of a prejudgment claim of right to possession  
27 *on top of and* attached to a copy of the summons and complaint  
28 addressed to that occupant with a person of suitable age and  
29 discretion at the premises, (2) affixing those documents, *in the*  
30 *manner prescribed above*, so that they are not readily removable,  
31 in a conspicuous place on the premises, in a manner most likely to  
32 give actual notice to that occupant, and (3) sending those  
33 documents, *in the manner prescribed above*, addressed to that  
34 occupant by first-class mail.

35 In addition to the service on an identified occupant, or if no  
36 occupant is disclosed to the officer or process server, or if  
37 substituted service is made upon the tenant and subtenant, if any,  
38 the officer or process server shall serve a prejudgment claim of  
39 right to possession for all other persons who may claim to occupy  
40 the premises at the time of the filing of the action by (1) leaving

1 a copy of a prejudgment claim of right to possession *on top of and*  
2 attached to a copy of the summons and complaint at the premises  
3 at the same time service is made upon the tenant and subtenant, if  
4 any, (2) affixing those documents, *in the manner prescribed*  
5 *above*, so that they are not readily removable, in a conspicuous  
6 place on the premises so that it is likely to give actual notice to an  
7 occupant, and (3) sending those documents, *in the manner*  
8 *prescribed above*, addressed to “all occupants in care of the named  
9 tenant” to the premises by first-class mail. Service may also be  
10 made on all other persons who may claim to occupy the premises  
11 pursuant to subdivision (b) of Section 415.45. *Service pursuant to*  
12 *subdivision (b) of Section 415.45 is deemed complete on the 10th*  
13 *day after posting and mailing.*

14 *Failure to attach a copy of the summons and complaint to the*  
15 *prejudgment claim of right of possession, as prescribed in this*  
16 *section, or attaching any papers or documents on top of the*  
17 *prejudgment claim of right of possession, shall invalidate service*  
18 *of the prejudgment claim of right to possession.*

19 The person serving process shall state the date of service on the  
20 prejudgment claim of right to possession form. However, the  
21 absence of the date of service on the prejudgment claim of right to  
22 possession does not invalidate the claim.

23 (d) Proof of service under this section shall be filed with the  
24 court and shall include a statement that service was made pursuant  
25 to this section. Service on occupants in accordance with this  
26 section may not alter or affect service upon the tenant or subtenant,  
27 if any.

28 (e) If an owner or his or her agent has directed and obtained  
29 service of a prejudgment claim of right to possession in accordance  
30 with this section, no occupant of the premises, whether or not the  
31 occupant is named in the judgment for possession, may object to  
32 the enforcement of that judgment, as prescribed in Section 1174.3.

33 (f) The prejudgment claim of right to possession shall be made  
34 on the following form:

1 NOTE TO PRINTING OFFICE: INSERT CAMERA-READY  
2 COPY HERE

3  
4 for Prejudgment Claim of Right to Possession form as printed on  
5 pages 4 to 7 of Chapter 57, 1991 Statutes.

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1 SEC. 4. Section 415.95 is added to the Code of Civil  
2 Procedure, to read:

3 415.95. A summons may be served on a business  
4 organization, form unknown, by ~~delivering~~ *leaving* a copy of the  
5 summons ~~of and the complaint to a~~ *during usual office hours with*  
6 *the person who is apparently in charge of the office of that business*  
7 *organization, and by thereafter mailing a copy of the summons and*  
8 *complaint by first-class mail, postage prepaid to the person to be*  
9 *served at the place where a copy of the summons and complaint*  
10 *was left. Service of a summons in this manner is deemed complete*  
11 *on the 10th day after the mailing.*

